IN THE

Supreme Court of the United States

No. 20

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, A Corporation,
Respondent

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

Brief for the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, Intervener

FRANK A. KEARNEY,
Attorney for the Employees' Representative Committee.
Phoebus, Virginia.

PERCY CARMEL,
Hampton, Virginia,
of Counsel.

THE RELIANCE PRESS OF NORFOLK, VA., INC.

INDEX

CITATIONS

IN THE

Supreme Court of the United States

No. 20

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, A Corporation,
Respondent

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

Brief for the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, Intervener

THE PARTIES

For convenience, the Petitioner will be referred to as the "Board"; the Newport News Shipbuilding and Dry Dock Company as the "Respondent, Shipyard or Company"; and the Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company as the "Committee or Intervener"; and the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 151 et seq.), as the "Act."

QUESTION PRESENTED

The question is, where the uncontradicted evidence shows that employees have selected as their representatives, for purpose of collective bargaining, fellow employees of their own choosing, free from interference or control of the employer and these representatives constituted a committee to deal with the management, whether the Board is justified in ordering the disestablishment of the employees' representatives, upon finding the employer contributed support to such an organization, in violation of Section 8 (2) of the Act, or whether the Circuit Court of Appeals was correct in eliminating from the Board's order the provision for a disestablishment of the Employees' Committee because there was no evidence to justify such action.

STATEMENT OF THE CASE

The brief of the Newport News Shi, building and Dry Dock Company, the Respondent in this matter, so correctly sets forth the facts and issues in this case, (many of which were omitted in the Board's brief) that the Intervener desires to adopt the brief filed by the Respondent as its brief.

The charge on which the complaint in this matter issued was made by the Industrial Union of Marine and Shipbuilding Workers of America, a labor organization, with its offices at 2332 Broadway, Camden, New Jersey (R. 1-4). The original charge and the complaint issued as a result thereof alleges certain employees of the Newport News Shipbuilding and Dry Dock Company were improperly discharged in violation of the National Labor Relations Act because of union membership and union activities. The In-

tervener was not interested or concerned with these charges in the complaint and at no time during the proceedings in this matter did it undertake to make any defense to these charges. The Board found that there was no evidence to sustain these charges of improper discharges because of union membership and union activities.

It has been the Intervener's contention from the start that the charges were filed in order to disband and discontinue the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company with the hope, if this could be obtained that the employees of that organization would join the Industrial Union of Marine and Shipbuilding Workers of America, an affiliate of the C. I. O. The charge that seven employees of the Company were improperly discharged in violation of the National Labor Relations Act, because they joined and assisted a labor organization and because of union activities, was simply used as an excuse to file the charge. The real reason for filing of the charge was to get the Employees' Representative Committee out of the way so that the Industrial Union of Marine and Shipbuilding Workers of America could have a clear field.

The Board has found that none of the men, who claimed to have been illegally discharged, were so discharged. They found that the Company had been guilty of unfair labor practices and ordered that these practices cease and further the disestablishment of the Committee. Thus fully accomplishing the purpose for which the charge was filed.

From this it can be plainly seen that the decision of this Court affects the continued existence of the Committee and that the Committee is the most vitally interested of all parties in this case.

RESUME OF FACTS IN AS FAR AS THEY CONCERN THE EMPLOYEES' REPRESENTATIVE COMMITTEE

For more than forty-three years prior to the filing of the complaint under consideration the Newport News Shipbuilding and Dry Dock Company has never had a labor dispute or disturbance that interferred with the operation of the Shipyard (R. 79).

In 1927 the Employees' Representative Plan was submitted to the employees of the Newport News Shipbuilding and Dry Dock Company for their adoption or rejection and it was adopted by a vote of 2430 for the Plan and 204 against the Plan. Since 1927 the Employees' Representative Committee has represented the employees in bargaining with the employer, and until June 30, 1937 the Employees' Representative Committee met with a Committee of similar number appointed by the Management. These two Committees met, discussed and negotiated in regard to matters affecting hours, wages and conditions of work. The General Joint Committee consisting of representatives of the Workmen and representatives of the Management successfully and peacefully negotiated all questions that arose to the satisfaction of the employees and employer, so that no labor dispute, large or small, has existed in the Newport News Shipbuilding and Dry Dock Company's plant during

the time that the Employees' Representative Committee has been in existence.

On June 15, 1937,[1] 5,718 out of 6,300 eligible employee voters present at work on that day participated in the election of 43 representatives to serve as Employees' Representative Committee from July 1, 1937, to June 30, 1938. It is admitted by the stipulation there was no interference by the Shipyard with the selection or election of these representatives (R. 76).

On June 7, 1938, after the Employees' Representative Committee and the employees in the Shipyard had been advised of the Trial Examiner's report and recommendation, a referendum was held by the employees of the Shipyard to determine whether the Employees' Representation Plan should continue. The elected Employees' Representative Committee desired to know whether the men in the yard stood fully behind them. In that election 75.00% of the employees present at work and below the grade of leading man participated, and voted 3,455 to continue the Plan against 562 to discontinue, with 51 void ballots. Pursuant to this mandate and in accordance with the By-Laws, the election of employee representatives was held on June 14, 1938, and 4,233 out of 4,889 voters present for work on that day, or 86.50% employees present for work on that day, participated in the voting and elected forty-three employees as the Employees' Representative Committee and to serve from July 1, 1938, to June 30, 1939, there

1—On June 18, 1937 the complaint was issue.

being an eligible voting list at that time of 5,378 (R. 219).

Since the Writ of Certiorari was granted in this case the employees have had another election for the selection of representatives.[2]

It was stipulated (R. 75-78):

"2. That from 1927 to the present the employees selected their representatives from the various districts by nominations and elections participated in only by employees below the rank of leading man and that none of the employees that participated in the election occupied any supervisory position.

"3. That the Shipyard did not interfere with, select, discourage, encourage or in any way prevent the selection of representatives by the employees of representatives of their own choosing.

"5. That there has been elected in accordance with the employees' representation Plan in force at the time of the election, by a majority of the employees of the Newport News Shipbuilding and Dry Dock Company (5,718 out of 6,300 eligible employee voters present at work on the day of election June 15, 1937) 43 representatives, 28 white and 15 colored, to serve as representatives from July 1, 1937, to June 30, 1938, and that these representatives compose the Employees' Representative Committee.

2—On June 20, 1939, 5217 out of 6008 employees present at work that day eligible to vote, or 86.7% voted in the election of employees representatives for the year 1939-1940. There were on the rolls of the company eligible to vote 6405 so that 81.1% of all eligible voters whether present for work or absent for one reason or another, participated in the election.

"8. Any employee below the grade of leading man who has been on the company's payroll for the period of one (1) year prior to nominations, who is twenty-one (21) years of age or over, and who is an American born citizen shall be qualified for election, as a representative. All employees who have been on the company's payroll for a period of sixty (60) days prior to the date fixed for nominations is entitled to vote, except company officials and supervisors from leading men up.

"Nominations and elections of representatives are conducted exclusively by the employees and in accordance with the rules and regulations prescribed by the executive committee of the Employees Representative Committee, and as set forth in the plan, nominations and elections are by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots.

"9. The ballots used in the election are printed and furnished by the employees and the election conducted by employees eligible to participate in the election and selected by the executive committee. The ballots and all expenses of conducting the election have been borne by the Employees' Representative Committee since July 5, 1935, out of the funds contributed by the employees for expenses of the committee sent to Washington in 1929 and 1930. . . .

"13. That employees from each district will testify without contradiction: That he is an employee of the yard. That there was no intereference in any way by the management in the selection of the repre-

sentative from his district. That he is a member of the Employees' Representative Plan. That no dues are charged. That he believes the majority of the employees in his district are satisfied with the Plan and with what has been accomplished under it and that the management has always been willing to negotiate with the Employees' Representative Committee in regard to any matter affecting men, wages, hours, and conditions under which they work and that they are not aware of any action on the part of the management to discourage membership in any union by any officers or persons in a supervisory capacity in the shipyard."

When counsel for the Intervener rested (R. 146) he said, "In view of the stipulation that counsel have agreed to, Mr. Examiner, we rest." In its brief the Board ignored the stipulation and erroneously states that the Court below was in error in reciting these facts contained in the stipulation were uncontradicted, although the stipulation expressly stated, "* * *. The following is the evidence that will be submitted without contradiction for the Intervener with respect to the Employees' Representative Plan of the Newport News Shipbuilding and Dry Dock Company from which the Trial Examiner, The National Labor Relations Board *or any Court* may determine the questions in issue." (R. 75).

The Board in its brief (P. 43) seeks to repudiate this stipulation agreed to by its attorney before the Trial Examiner and critizes the Court below for stating: (1) During the life of the Plan that the Company had not in any way interferred with the

selection by the employees of representatives of their own choosing. (2) That all expenses of election under the Plan since 1937 had been borne by the employees.[3] (3) That the Respondent has not discouraged membership in any union. A casual reading of the stipulation will show that these along with other facts are exactly what the Board agreed would be uncontradicted.

BOARD'S CONTENTION

The National Labor Relations Board contends: One, because the Plan of representation of employees was discussed with the employer before it was put into effect back in 1927, when it was not unlawful to do this, it is a company sponsored organization from its inception and cannot be corrected or amended to make it qualify under the National Labor Relations Act. And two, that by reason of Articles VI and IX of the Plan of representation of employees, the organization is still objectionable. Even though these objectionable articles have since been eliminated.

For these reasons the Board contends that the affirmative action calling for disestablishment of the Employees' Representative Committee ordered by the Board should not have been eliminated by the Circuit Court of Appeals.

INTERVENER'S CONTENTION

Representatives freely and fairly chosen by a vast majority of employees to represent the employees in negotiations with the employer should not be disestab-

3—The stipulation was that all expenses had been borne by the Employees' Representative Committee since July 5, 1935 out of funds contributed by the employees (R. 76).

lished by an order of the Board because of some insignificant help rendered by the employer that has in no wise affected or interferred with the free, fair and unmolested selection of these representatives.

ARGUMENT

The language of the Court below best states the position of the Employees' Representative Committee when it said, "The purpose of the Act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesman to American-born fellow workmen is unwise. To deny them the right is to ignore the express command of the statute."

The Court stated further: "But it was also important to take cognizance of the undouted service that the organization had previously rendered to men and management alike, and of the insistence of the men upon the preservation of their organization, and to vote their sincere desire to eliminate in form as well as in substance every opportunity of the employer to a future share in the administration. That has now been accomplished and there is no longer any basis for the conclusion that the present plan is incapable of serving as a sincere representative of the employees for the purpose of collective bargaining."

"The National Labor Relations Act was designed to deal with the actualities of industrial life in this country, and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to or-

ganize and bargain collectively, with complete freedom and independence, through representatives of their own choosing." It is not questioned, but that the employees have had a free hand in the selection of their representatives.

If they want to elect as their representatives only fellow employees they have a perfect right to do this, and if they want to change their by-laws and rules to elect as their representatives outside persons they can easily do this by a change in the by-laws of their organization without protest or interference of any kind from the employer. The employer has nothing to do with this and in this respect the dissenting opinion is clearly wrong.

While the Board contended that Article VI and Article IX of the plan restricted the independence of the Committee in its capacity as a representative of the men, it was thoroughly understood by the Shipbuilding Company and the Employees' Representative Committee that the provisions of Article VI and Article IX were to apply to matters pertaining to the rights of the Company under the Plan, and in nowise applied or were intended to effect the independence of the Committee.

Because of the Board's contention that while this might be so as to past actions something different might be tried in the future, Articles VI and XI were amended by the Employees' Representative Committee to overcome this theoretical objection.

We have then an Employees' Representative Committee that has been fairly elected without interference or molestation by the employer, by an over-

whelming majority of the employees, to represent them as a collective bargaining agency in negotiations with the employer and which has functioned as such.

The question then arises, whether the Organization should be disestablished because of some insignificant assistance given it by the employer, such as the distribution of copies of the minutes through the company's mailing system, and permitting copies of the minutes to be copied on the company time?

It is submitted that the cease and desist order eliminates this inconsequential aid that has been given. To cause the disestablishment of this Organization is unreasonable, and would defeat the very purpose of the Act and is not justified by the evidence.

The Board takes the position that where it has found that an employer has given assistance to a labor organization of its employees that it has sole and unlimited discretion as to what affirmative relief it shall order.

In *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, the Court said: "The authority to require affirmative action to 'effectuate the policies' of the Act is broad, but is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes."

In *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, we find: "The employers' practices which were complained of, could be stopped without imperiling the interests of those who for all that appears had exercised freely their right of choice."

In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* Inc., et als., 303 U. S. 261, 270, we find: "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under section 9 (c), 29 U. S. C. A. 159 (c), even though it had ordered the employer to cease unfair labor practices."

It is clear from these cases that this Court recognizes that the National Labor Relations Board does not have unlimited authority in ordering affirmative relief.

No election was called for by the National Labor Relations Board to determine whether the majority of the employees desired the Employees' Representative Committee to continue to be their bargaining agency, although the Employees' Representative Committee themselves called for and held a referendum, after the report of the Trial Examiner of the National Labor Relations Board had been published. The result of that referendum was a vote of 3,455 for with 562 against a continuation of the Plan.

The Board does not contend that there is another labor organization or that there are other employees' representatives to look after the interest of the men. To disestablish this Employees' Representative Committee, overwhelmingly elected by the employees of the Newport News Shipbuilding and Dry Dock Company, leaves them without a collective bargaining agency.

It might be that they could join up with some national labor organization, or that they might go on without representatives. But it is not the purpose of the Act to force the employees into any particular kind of a labor organization, nor is it the purpose of the act to deprive them of their honestly, freely chosen representatives. A union limited to the employees of a single employer is as legal as any other. *Ballston-Stillwater K. Co., Inc.*, v. *National Labor Relations Board*, 98 Fed. (2d) 758.

On the other hand Section 9-A of the Act expressly provides, that representatives designated or selected for the purpose of collective bargaining by the majority o. the employees in a unit appropriate for such purposes, shall be the exclusive representatives of *all* of t' : employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment: Procided, that any individual employee or a group of employees shall have the right at any time to present grievances to the employer.

It is admitted by the stipulation that the representatives selected by the employees have always been freely and fairly selected, without interference or molestation on the part of the employer. In internal matters or matters affecting only the employees the management according to the agreement and understanding between the parties had no say or control. And the record is bare of any instance in which the management interferred or attempted to interfere with internal or solely employees' matters.

It was well understood by all parties concerned that the last sentence of Section 1, Article IV and Article IX of the Plan applied only to matters concerning the management.

For example, it will be conceded that the management ought to have some say as to whether it would be agreeable with them for the Employees' Representative Committee to vote the employees an increase in pay.

There is no evidence in the case to indicate that anything but a happy relationship existed between the employer and the employees. The record is entirely free from any evidence that anybody in authority in the Newport News Shipbuilding and Dry Dock Company discouraged membership in any union, hired spies of any kind to report to them on any union activities; or that gangsters or mobsters were hired to attack union organizers or to prevent any union organization; or there was any unfair labor methods or tactics or anti-unionism. The evidence (R. 48) that one of the most active members of the Employees' Representative Committee and the man that made all of the revisions from the original Plan down to the date of the hearing, and who was Chairman from 1930 to 1937, was a member of the International Brotherhood of Electrical Workers, affiliated with American Federation of Labor, and had been a member for a number of years; and when the Employees' Representative Plan was first put into effect the same man (Mr. Blanton) was Treasurer of the Central Labor Union, Treasurer of a local union; Secretary of the Union's policy committee, and Secretary of its building com-

mittee that was then engaged in acquiring a building. The record also shows the pattern makers were fully organized and affiliated with the American Federation of Labor (R. 144).

The Board in its brief devotes considerable time to complaining of the action of the Circuit Court of Appeals in considering as a part of the record certain documents certified to the Circuit Court of Appeals in accordance with the rules and regulations of the Board, but which were submitted after the Board had held its hearing.

When this case war argued before the National Labor Relations Board the Chairman of that Board took occasion to say to one of the counsel for the Company, when he was arguing that the rules of procedure had not been complied with, that the Board did not feel that it should adhere to the narrow rules of procedure that existed in feudal days. In its brief before the Court, however, the Board becomes very technical and complains very bitterly that the strict rules of procedure should have been followed by the Circuit Court of Appeals and that even though the Board certified as a part of the record certain documents, the Court should not have considered this part of the record.

The Board has a right to waive compliance with its rules. It did so when it made the supplemental certificate for the purpose of completing or correcting the record filed in the Court below. If the Board did not intend that the Court should consider the data, then the Board should have refused to make the certificate making the data "a part of the record."

Disregarding the fact that by its supplemental certificate it certified the data as "a part of the record," the Board contends (Brief 35-56) that the Court should not consider the data respecting the referendum because, it says, the data was submitted after the hearing before the Board, but before its decision. It is an undeniable fact that the Intervener submitted the data well in advance of the Board's decision and that the data was material as showing the employees' desire to retain the Plan.

It would not have the Court base its decision on the "very merits of the case" but on a rule of convenience which the Board at this late date seeks to invoke. It made no objection to the consideration of the data when the case was before the Court below.

There is no substance to the Board's contention that the data was submitted too late. The Board had not made its decision. This is made clear by the language of the Board's decision (R. 193), which clearly shows that the Board did consider the data. Otherwise it could not have ruled it inadmissible.

The Board's contention, made at this late date, is unfair to the employees, the Intervener here, and to the Court below. It is without merit.

The Intervener has no objection to the cease and desist order entered against the Company, but it does object to action of the Board ordering the disestablishment of its organization, who is composed of the duly, honestly elected representatives of the employees.

It is the contention of the Intervener that none of the Board's findings of fact adversely affecting the Intervener are supported by substantial evidence.

Section 10 (e) of the Act, 29 U. S. C. A., page 160 (e), provides that "The findings of the Board as to facts, if supported by evidence, shall be conclusive." Hence the Circuit Court of Appeals is not at liberty to review the evidence and make its own findings; but neither is it bound to accept findings based on evidence which merely creates a suspicion or gives rise to an inference that cannot reasonably be accetped. The statute means that the Board's findings are conclusive if supported by substantial evidence. *Appalachian Electric Power Co.* v. *National Labor Relations Board,* 4 Cir., 93 F. 2d 985, 989; *National Labor Relatoins Board* v. *Thompson Products,* 6 Cir., 97 F. 2d 13, 15; *National Labor Relations Board* v. *Lion Shoe Co.,* 1 Cir., 97 F. 2d 448. This is the yardstick to be applied to an examination of the record.

If the Board honestly questioned the result of the referendum held on June 7, 1938, and the election of June 14, 1938, then it should have, in all fairness, and under the expressed provisions of Section 9 (c) of the Act, held an election to determine the wishes of the employees. This the Board did not do. This we challenge it to do.

CONCLUSION

The decision of the Circuit Court of Appeals for the Fourth Circuit is correct and should be affirmed.

FRANK A. KEARNEY,
Attorney for the Employees' Representative Committee.
Phoebus, Virginia.

PERCY CARMEL,
Hampton, Virginia,
of Counsel.

pp. 2+5+6

SUPREME COURT OF THE UNITED STATES.

No. 20.—October Term, 1939.

National Labor Relations Board, Petitioner, *vs.* Newport News Shipbuilding & Dry Dock Company.

On Writ of Certiorari to United States Circuit Court of Appeals, Fourth Circuit.

[December 4, 1939.]

Mr. Justice Roberts delivered the opinion of the Court.

In a case duly instituted and heard, the National Labor Relations Board issued an order,[1] pursuant to the provisions of Sec. 10(c)[2] of the National Labor Relations Act, requiring the respondent, Newport News Shipbuilding & Dry Dock Company: (1) to cease and desist from (a) dominating or otherwise interfering with the administration of the Employees' Representative Committee, a labor organization,[3] or the formation or administration of any other labor organization of its employes; (b) from interfering with, restraining, or coercing its employes in the exercise of the right guaranteed them by Sec. 7[4] of the Act. The order further required the company (2) to take affirmative action, namely: (a) to withdraw all recognition from the Committee as the representative of any of its employes for the purpose of dealing with the company concerning labor conditions and wages, and completely to disestablish the Committee as such representative; (b) to post copies of the order throughout the plant; (c) to maintain said notices for thirty days; and (d) to notify the Board's Regional Director of the steps taken to comply with the order.

The order was based upon findings that the respondent had dominated and interfered with the formation and administration of the

[1] 8 N. L. R. B. 866.

[2] 49 Stat. 449, 454; 29 U. S. C. Supp. IV, Sec. 160(c).

[3] The Committee was granted leave to intervene, produced evidence, and participated in the argument before the Board, and was heard in the court below and in this Court.

[4] 49 Stat. 449, 452; 29 U. S. C. Supp. IV, Sec. 157.

Committee, had contributed to it financial and other support, and was still dominating and interfering with the Committee, contrary to Sec. 8(1) of the Act.[6]

The Company petitioned the Circuit Court of Appeals for review. The Board answered praying that the court dismiss the company's petition and decree enforcement. The court held that the Board had jurisdiction of the cause, but that its holding that the company had dominated and interfered with the formation and administration of the Committee was without support in the evidence. The court decreed that Section 1(a) and (b) and Section 2(b)(c) and (d) of the Board's order should be enforced but that Section 2(a), which required the withdrawal of recognition of the Committee and its disestablishment as a representative of the employes, should be stricken from the order. We granted certiorari because of asserted conflict with decisions of this court.[7]

The respondent does not press the claim advanced in the court below that the Board lacked jurisdiction. The sole issue here joined is as to the propriety of that portion of the Board's order which constrained the respondent to withdraw recognition of the Committee and to disestablish it as the bargaining representative of the employes. Resolution of the issue requires that we determine whether the Board's ultimate finding of domination and interference by the employer has substantial support in the evidence.

The Board's subsidiary findings of fact are not the subject of serious controversy. The respondent attacks the ultimate conclusion of fact as unjustified by the subsidiary findings and further contends that the conclusion could not have been reached had not the Board ignored and refused to find other relevant facts which were either stipulated or proved without contradiction.

The Board's findings were to the following effect: In 1927, in cooperation with its employes, the respondent put into effect a plan of employe representation known as "Representation of Employes". The preamble of the plan stated that its purpose was to give employes a voice in respect of the conditions of their labor and to provide a procedure for the prevention and adjustment of future differences. Under the plan the employes were to elect representa-

[5] 49 Stat. 449, 452; 29 U. S. C. Supp. IV, Sec. 158.

[6] The complaint also charged that the respondent had discharged certain employes for union activity and had thus violated Sec. 8(3) of the Act but the Board dismissed this charge.

[7] National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261; National Labor Relations Board v. Pansteel Metallurgical Corp., 306 U. S. 240.

tives each of whom was paid $100 per year for services as such. No one holding a supervisory position was eligible to serve as a representative or to vote for a representative. Administration of the plan was vested in certain joint committees each of which consisted of five elected representatives and not more than five representatives chosen from amongst the employes by the management. There was provision for a Management's Representative whose function was "to keep the management in touch with the representatives and represent the management in negotiations with their officers and committees." A provision calling for the arbitration of differences was to become operative only upon concurrence of the respondent's president.

Amendment of the plan could be made only by the affirmative vote of two-thirds of the full membership of the Joint Committee on Rules or of a majority of all the employes' representatives and all the representatives of the management, at an annual conference. The plan set forth that independence of action of elected representatives was guaranteed by permitting them to take questions of discrimination to any of the superior officers, to the Joint Committee, and to the president of the company. There was no provision for the payment of dues.

The original plan was revised in 1929, 1931, 1934, 1936, and 1937.

By the 1931 revision, which was not materially altered until 1937, a General Joint Committee was set up in lieu of several joint committees theretofore constituted, and two representatives were to be elected by the employes in each department while the respondent was to appoint an equal number of management representatives, a majority of each class of representatives constituting a quorum. The annual remuneration to be paid elected representatives by the company was reduced to $60.00. The secretary of the General Joint Committee was paid $5.00 monthly by the company. An Executive Committee was also established constituted of five elected employe representatives and five representatives of management.

Elections were arranged for by the management representatives but, in so far as possible, were conducted by the employes themselves.

A procedure was established for the adjustment of individual employe grievances, whereby, in event of failure of settlement, notice was to be given to the president of the company. Under the

revised plan the General Joint Committee met monthly to take action upon matters presented by the Management Representative or by employe representatives or subcommittees; but finality of the action of the General Joint Committee was dependent upon approval by the respondent's president. Amendment of the plan, which could be accomplished by a two-thirds vote of the entire General Joint Committee, became effective when approved by the president of the company.

The last revision made in May 1937, after the validity of the National Labor Relations Act had been sustained by this court, originated in the General Joint Committee, one-half of whose members represented the interests of the respondent. The amended plan was referred to the Executive Committee, similarly constituted, and to the elected employe representatives, respectively. After announcement by the Management Representative that the revision was acceptable to the respondent it was adopted by the General Joint Committee. The personnel manager, and the general manager of the respondent, took part in the revision of the plan. The secretary of the Committee testified that this revision was undertaken in order to bring the plan within the letter, as well as within the spirit, of the Act.

The two principal changes made were the elimination of payment of compensation by the respondent to elected representatives of the employes and the substitution of an Employes' Representative Committee, composed solely of employe representatives elected by employes, for the former General Joint Committee and the Joint Executive Committee. The revised plan provides that action of the Employes' Representative Committee "shall be final and become effective upon agreement by the company"; and, further, that any article of the plan may be amended by a vote of two-thirds of the entire membership of the committee; and "amendments shall be in effect at the time specified by the Employes' Representative Committee, unless disapproved by the company within fifteen days after their passage."

The grievance procedure permits the presentation of a grievance to the respondent's personnel manager, or its general manager, in the event no settlement has theretofore been effected.

Upon the basis of these findings the Board concluded that, from the inception of the plan in 1927 until its final revision in 1937, the respondent dominated, assisted, and interfered with the adminis-

tration of the labor organization; and that the method followed for amendment of the plan in 1937, and the provisions of the final revision, left the company still in the position of dominating and interfering in the formulation and administration of the plan, contrary to the provisions of Sec. 7 of the Act. The Board held that the Committee is, in the circumstances, incapable of serving the employes as their genuine representative for the purpose of collective bargaining.

The respondent criticises several of the findings as without support or contrary to uncontradicted evidence. We do not stop to consider these contentions, since, without such findings, there would still be a basis in the record for the Board's conclusions.

The principal contention of the respondent is that the Board ignored uncontradicted facts and refused to make findings respecting them. The Board replies that it did not ignore these facts, but omitted to find them because they were immaterial to the pivotal issues in the case. It is uncontradicted that labor disputes have repeatedly been settled under the plan; that since 1927 no labor dispute has caused cessation of activities at the respondent's plant; that overwhelming majorities of the employes have participated in the election of representatives; that the company has never objected to its employes joining labor unions; that no discrimination has been practiced against them because of their membership in outside unions; and that neither officials nor superior employes not eligible to vote in the election of employes' representatives, have interfered, or attempted to interfere, or use any influence, in connection with the election of representatives.

Before ~~After~~ the Board's decision and order had been promulgated a referendum was held at which a sweeping majority of the company's employes signified, by secret ballot, their satisfaction with the plan as revised in 1937 and their desire for its continuance. Counsel for the Committee requested the Board to certify these facts to the Circuit Court of Appeals as part of the record before the court. The Board, though not bound so to do, embodied these facts in a supplementary certificate. It now takes the position that the only proper way to bring these additional facts to the attention of the reviewing court would have been by application to the court to remand the cause for further findings, and as this was not done, the certificate was irregular and should not have been considered. We are unable to agree with this contention. We think the Circuit

Court of Appeals cannot be convicted of error in accepting the Board's supplemental certificate.

The Board urges that, notwithstanding the facts on which the respondent relies, the structure of the Committee, under the 1937 plan, renders the organization incompetent to meet the requirements of the National Labor Relations Act; and further that, if its fundamental law were free from defect, the history of its organization and administration would require that it be disestablished as the bargaining agency of the employes.

Prior to the adoption of the Wagner Act the plan did not run counter to any federal law, either in conception or administration. The respondent, however, concedes that sundry features of the plan, as then formulated, conflict with the provisions of the statute. Both employer and employees so recognized when they undertook the revision of 1937 for the purpose of bringing the plan within the spirit and the letter of the Act.

The Board has concluded that the provisions embodied in the final revision, whereby action of the Committee requires, for its effectiveness, the agreement of the company, and whereby amendment of the plan can become effective only if the company fails to signify its disapproval within fifteen days of adoption, still give the respondent such power of control that the plan is in the teeth of the expressed policy and the specific prohibitions of the Act. The respondent argues that these provisions affect only the company and not the employes; that, in collective bargaining, there is always reserved to the employer the right to qualify or to reject the propositions advanced by the employes. Whatever may be said of the first mentioned provision, this explanation will not hold for the second. The plan may not be amended if the company disapproves the amendment. Such control of the form and structure of an employe organization deprives the employes of the complete freedom of action guaranteed to them by the Act, and justifies an order such as was here entered. The court below, in its opinion, states it was advised in a brief after the hearing in that court, that the plan had been amended by striking out the provisions in question. It concludes, therefore, that their previous existence is immaterial. The statute expressly deprives the reviewing court of power to consider facts thus brought to its attention. The case must be heard on the record as certified by the Board. The appropriate procedure to add facts to the record as certified is prescribed in Section 10(e) of the Act.

But we think that if the record disclosed such an alteration of the plan, the order of the Board could not be held erroneous. The Board held that, where an organization has existed for ten years and has functioned in the way that the Committee has functioned, with a joint control vested in management and men, the effects of the long practice cannot be eliminated and the employes rendered entirely free to act upon their own initiative without the complete disestablishment of the plan. On the record as made we cannot say this was error.

While the men are free to adopt any form of organization and representation whether purely local or connected with a national body, their purpose so to do may be obstructed by the existence and recognition by the management of an old plan or organization the original structure or operation of which was not in accordance with the provisions of the law. Sec. 10(c) was not intended to give the Board power of punishment or retribution for past wrongs or errors. Action under that section must be limited to the effectuation of the policies of the Act. One of these is that the employes shall be free to choose such form of organization as they wish.

As pointed out in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, disestablishment of a bargaining unit previously dominated by the employer may be the only effective way of wiping the slate clean and affording the employes an opportunity to start afresh in organizing for the adjustment of their relations with the employer. Compare *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 262.

The court below agreed with the respondent that, as the Committee had operated to the apparent satisfaction of the employes; as serious labor disputes had not occurred during its existence; and as the men at an election held under the auspices of the Committee had signified their desire for its continuance, it would be a proper medium and one which the employer might continue to recognize for the adjustment of labor disputes. The difficulty with the position is that the provisions of the statute preclude such a disposition of the case. The law provides that an employe organization shall be free from interference or dominance by the employer. We cannot say that, upon the uncontradicted facts, the Board erred in its conclusion that the purpose of the law could not be attained without complete disestablishment of the existing organization which had been dominated and controlled to a greater or less extent

by the respondent. In applying the statutory test of independence it is immaterial that the plan had in fact not engendered, or indeed had obviated, serious labor disputes in the past, or that any company interference in the administration of the plan had been incidental rather than fundamental and with good motives. It was for Congress to determine whether, as a matter of policy, such a plan should be permitted to continue in force. We think the statute plainly evinces a contrary purpose, and that the Board's conclusions are in accord with that purpose.

The decree must be reversed and the cause remanded for further proceedings in conformity to this opinion.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.